



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:

Roger Weiler,

Respondent

Proceeding Under Section 106(a)
of the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980,
42 U.S.C. § 9606(a).

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)
) U.S. EPA Docket No. 2002-12
) UNILATERAL ADMINISTRATIVE
) ORDER FOR THE PERFORMANCE
) OF A REMOVAL ACTION
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I. AUTHORITY

This Unilateral Administrative Order ("Order") is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 ("CERCLA"). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-8-A and 14-14-B. This authority has been duly redelegated to the Director, Superfund Division, EPA Region 9, by delegation dated September 29, 1997, and thereafter redelegated to the Chief of the Response, Planning and Assessment Branch of the Superfund Division, Region 9 ("Branch Chief"), by delegation dated November 16, 2001.

II. PARTIES BOUND

1. This Order shall apply to and be binding on Roger Weiler, in his individual and personal capacity. This Order shall be binding on Respondent and his agents, successors and assigns. No change in ownership or operational status will alter Respondent's obligations under this Order. Notwithstanding the terms of any contract or agreement, Respondent is responsible for compliance with this Order and for ensuring that his employees, contractors, and agents comply with this Order. Respondent shall provide a copy of this Order to all contractors, subcontractors, and consultants that are retained by Respondent to perform the work required by this Order within three (3) days after the Effective Date of this Order or within three (3) days of retaining their services, whichever is later.

2. Respondent may not convey any title, easement, or other interest he may have, in any property comprising the Site, as the term "Site" is defined below, without a provision permitting the continuous implementation of the provisions of this Order. If Respondent wishes to transfer any title, easement, or other interest he may have in any property comprising the Site, Respondent shall provide a copy of this Order to any subsequent owner(s) or successor(s) before any ownership rights are transferred. In such case, Respondent shall advise EPA one (1) month in advance of any anticipated transfer of interest.

III. DEFINITIONS

3. Unless otherwise expressly provided herein, the terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order, or in the exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

"Days" shall mean consecutive calendar days unless expressly stated otherwise.

"Working days" shall mean consecutive calendar days other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

"Unilateral Order" or "Order" shall mean this Unilateral Administrative Order, EPA docket number 2002-12, and any exhibits attached hereto. In the event of a conflict between this Unilateral Order and any exhibit, this Unilateral Order shall control.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

"Paragraph" shall mean a portion of this Unilateral Order identified by an Arabic numeral.

"Response Action" shall be those specific work items each Respondent is required to perform at the Site pursuant to this Unilateral Order, as set forth in Section IX of this Unilateral Order.

"Respondent" shall mean Roger Weiler.

"Section" shall mean a portion of this Unilateral Order identified by a Roman numeral, unless otherwise stated.

"State" shall mean the State of California, and all of its political subdivisions, including the California Department of Toxic Substances Control ("DTSC").

"United States" shall mean the United States of America.

IV. FINDINGS OF FACT

4. Site description.

The Intaglio Vivi-Color Alliance Site facility is located at 401 Mt. Vernon Ave. in Bakersfield, Kern County, California (Latitude 35° 21' 04" N and Longitude 118° 58' 03" W) ("the IVA Site" or "the Site"). The Site is located on the eastern side of Mt. Vernon Ave. approximately one-quarter mile north of highway 58. Although the Site is adjacent to light industrial facilities, there are residences within 100 yards and on the opposite (west) side of Mt. Vernon Ave. There are three schools, the Apostolic Assembly Church School, the Loma Linda State Pre-School, and the Mt. Vernon Elementary School, in the next block to the north. The facility includes a large plating room containing plating vats storing various amounts of plating solution, an engraving room containing several containers of characteristic hazardous wastes in various states of deterioration, and partially paved outside storage area storing approximately seventy fifty-five gallon poly and steel drums of hazardous substances in various states of deterioration.

5. Site characteristics and ownership.

Roger Weiler is the current owner of the Site property, T.I Group, Ltd., was the owner of the facility during disposal and releases of hazardous substances, and Intaglio Vivi-Color Alliance, Ltd., was the operator of the facility during disposal and releases of hazardous

substances. Roger Weiler is the president and owner of Intaglio Vivi-Color Alliance, Ltd., and T.I Group, Ltd.

6. Release Characteristics.

On November 20, 2001, representatives of the Kern County Environmental Health Services Department ("EHSD") conducted a Certified Unified Program Agency (CUPA) inspection at the facility. On January 24, 2002, representatives of Kern County EHSD conducted a sampling inspection of the facility. A number of liquid samples collected from drums had a pH less than 1.0 and significantly elevated chromium concentrations. Soil samples indicated elevated levels of chromium and copper. Kern County thereafter issued a formal Notice of Violation and a compliance order to the facility's owner. When the owner did not respond, Kern County conducted the second CUPA inspection in January 2002. Shortly after this inspection, Kern County requested EPA's assistance at the Site.

A Site inspection and assessment activities conducted by EPA documented the existence of several releases and threats of releases at the Site. The Site contained eight plating vats, at least one appeared to contain plating solution. A large portion of the floor area appeared to be stained by releases of plating materials and severely etched. The plating vats did not have secondary containment to prevent the contents of a vat from overflowing offsite. A vat failure due to deteriorating containers, vandalism or fire would result in these hazardous substances mixing and subject the surrounding population to hazardous chemical exposure. There were approximately ninety 55-gallon drums of hazardous substances, many of which were labeled flammable or corrosive. Many of these containers had caps or bungs missing, were open and were severely weathered. Two large "poly" storage tanks as well as an assortment of miscellaneous, potentially contaminated equipment were also observed at the facility.

The following chemicals identified at the Site are "hazardous substances," as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. § 302.4 and Table 302.4: chromic acid, sulphuric acid, flammables, muriatic acid, nickel chloride, and boric acid.

On June 4, 2002, EPA's Federal On-Scene Coordinator ("OSC") issued the Respondent, Intaglio Vivi-Color Alliance, Ltd., and T.I Group, Ltd., a written Notice of Federal Interest and gave the Respondent an opportunity to conduct a removal of hazardous materials and substances from the Site. EPA was given assurances that Respondent would comply with EPA's requests. Threats to public health or the environment stem from the potential for deteriorating conditions at the abandoned Site, which would create an imminent and substantial threat of a release of hazardous substances caused by fire or explosion in a heavily populated neighborhood.

V. CONCLUSIONS OF LAW

7. The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

8. The Respondent, Roger Weiler, is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

9. Respondent Roger Weiler owns title to the subject real property. Intaglio Vivi-Color Alliance, Ltd., was the operator during the time of disposal and release of hazardous substances at the Site. T.I Group, Ltd., was the owner during the time of disposal and release of hazardous substances at the Site. Roger Weiler is a "liable party" within the meaning of Section 107(a), 42 U.S.C. § 9607(a), and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

10. Chromic acid, sulphuric acid, muriatic acid, nickel chloride, boric acid, and characteristic corrosive and ignitable wastes are all "hazardous substances," as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

11. The potential for release of hazardous substances from the Site constitutes an imminent and substantial endangerment because of the actual or threatened release of hazardous substances, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

VI. DETERMINATIONS

Based on the Findings of Fact and the Conclusions of Law stated herein, EPA has made the following determinations:

12. That an actual or threatened release of hazardous substances from the Site presents an imminent and substantial endangerment to the public health or welfare or the environment.

13. That conditions at the Site constitute a threat to public health or welfare or the environment based on consideration of the factors set forth in the NCP at 40 C.F.R. § 300.415(b), and that the actions required by this Order are necessary to protect the public health or welfare or the environment.

14. That the actions required by this Order, if properly performed, will be consistent with the NCP, and are appropriate to protect the public health or welfare or the environment.

VII. NOTICE TO THE STATE

15. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA has notified the state of California and Kern County of the issuance of this Order by providing a copy of this Order.

VIII. EFFECTIVE DATE

16. Except where this Order specifically provides otherwise, the effective date of this Order with respect to the Respondent shall be three calendar days following receipt of this Order by the Respondent, unless a conference is requested as provided below. If a conference is requested, the effective date of this Order shall be the third calendar day following the day of the conference, unless modified in writing by U.S. EPA.

IX. ORDER

17. Based on the Findings of Fact, Conclusions of Law, and Determinations, EPA hereby orders Respondent to perform the specific work set forth below under the direction of the EPA OSC, and to comply with all requirements of this Order until EPA provides notice that the Response Action is complete.

Work to be Performed

18. Respondent shall immediately restrict access to the Site and shall not allow any materials, equipment, or any other item to be removed from the Site without prior EPA approval.

19. Respondent shall retain a contractor qualified to undertake and complete the requirements of this Order, and shall notify U.S. EPA of the name of such contractor within five days of the effective date of this Order.

20. Within ten (10) calendar days after the effective date of this Order (as defined below), Respondent shall submit a Work Plan to U.S. EPA for approval. The Work Plan shall provide a concise description of the activities to be conducted to comply with the requirements of this Order, and shall include a proposed schedule for implementing and completing such activities. The Work Plan shall require Respondent to perform, at a minimum, the following removal activities:

- a) Identify all chemical compounds in all vats and other containers. Sample and analyze all unknown chemicals and all chemicals in containers without labels or with unreadable labels.
- b) Segregate and secure containers of chemical waste in groups according to compatibility of the chemical contents.
- c) Properly characterize, containerize and secure all of the spilled material encountered within the facility or in the outside storage area.
- d) Properly transport and dispose of, in accordance with all applicable or appropriate and relevant federal and state laws, all waste hazardous substances on Site.
- e) Provide EPA with copies of all documentation related to off-Site disposal of wastes including, but not limited to, manifests, waste profiles and analytical data and disposal costs.
- f) Notify the EPA On-Scene Coordinator at least forty-eight (48) hours prior to any on-Site work. Notify the EPA On-Scene Coordinator at least 72 hours prior to disposal of wastes.
- g) Provide and implement a post-cleanup sampling and analysis plan.

21. The Work Plan shall be reviewed by U.S. EPA, which may approve, disapprove, require revisions, or modify the Work Plan. Respondent shall implement the Work Plan as finally approved by U.S. EPA. Once approved, the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order.

22. The Work Plan shall contain a site safety and health plan, a schedule of the work to be performed, and a post-cleanup sampling and analysis plan. The site safety and health plan shall be prepared in accordance with EPA's Standard Operating Safety Guide, dated November

June 1992, and with the Occupational Safety and Health Administration ("OSHA") regulations applicable to Hazardous Waste Operations and Emergency Response, 29 CFR Part 120. The Work Plan and other submitted documents shall demonstrate that the Respondent can properly conduct the actions required by this Order.

23. Within ninety (90) calendar days after U.S. EPA approval of the Work Plan, Respondent shall complete all the elements of the Work Plan as approved or modified by U.S. EPA. Failure of Respondent to properly implement any aspect of the Work Plan shall be deemed to be a violation of the terms of this Order.

24. Respondent shall provide EPA with written weekly summary reports. These reports should contain a summary of the previous week's activities and planned events.

25. All sampling and analysis shall be consistent with the "Quality Assurance/Quality Control Guidance for Removal Activities:" "Sampling A/QC Plan and Data Validation Procedures," EPA OSWER Directive 9360.4-01, dated April, 1990.

26. Any hazardous substance, pollutant, or contaminant transferred off-Site as a result of this Order must be taken to a facility acceptable under the EPA Off-Site Rule (OSWER Directive 9834.11, November 13, 1987) in accordance with CERCLA Section 121(d)(3), 42 U.S.C. §9621(d)(3).

27. On or before the effective date of this Order, the Respondent shall designate a Project Coordinator. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during all work. The U.S. EPA has designated William E. Lewis, as its On-Scene Coordinator ("OSC"). The OSC and the Project Coordinator shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, all communication between the Respondent and the U.S. EPA, and all documents, reports, approvals

and other correspondence concerning the activities required by this Order shall be directed through the OSC and the Project Coordinator.

28. The U.S. EPA and Respondent shall each have the right to change their respective designated OSC or Project Coordinator. Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be verbal, but shall promptly be reduced to writing.

29. The U.S. EPA OSC shall have the authority vested in an OSC by the NCP, 40 CFR Part 300, as amended, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or the Respondent at the facility.

30. No extensions to the above time frames shall be granted without sufficient cause. All extensions must be requested, in writing, and shall not be deemed accepted unless approved, in writing, by U.S. EPA, in accordance with Section XVII of this Order.

31. All instructions by the U.S. EPA OSC or his designated alternate shall be binding upon the Respondent as long as those instructions are not clearly inconsistent with the National Contingency Plan.

32. To the extent that the Site or other areas where work under this Order is to be performed is owned by, or in possession of, someone other than the Respondent, the Respondent shall obtain all necessary access agreements. In the event that after using his best efforts Respondent is unable to obtain such agreements, Respondent shall immediately notify U.S. EPA.

33. The Respondent shall provide access to the Site to U.S. EPA employees, contractors, agents, and consultants at reasonable times, and shall permit such persons to be present and move freely in the area in order to conduct inspections, including taking photographs

and videotapes of the Site, to do cleanup/stabilization work, to take samples to monitor the work under this Order, and to conduct other activities which the U.S. EPA determines to be necessary.

34. Nothing contained herein shall be construed to prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order, or from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. Section 9601, et seq., or any other applicable law.

35. The provisions of this Order and the directions of the OSC shall be binding on the employees, agents, successors, and assigns of the Respondent.

36. The Respondent shall submit a final report summarizing the actions taken to comply with this Order. The report shall, at a minimum, contain: identification of the facility, a description of the locations and types of hazardous substances encountered at the facility upon the initiation of work performed under this Order, a chronology and description of the actions performed (including both the organization and implementation of response activities), a listing of the resources committed to perform the work under this Order (including financial, personnel, mechanical and technological resources), identification of all items that affected the actions performed under the Order and discussion of how all problems were resolved, a listing of quantities and types of materials removed from the facility, a discussion of removal and disposal options considered for any such materials, a listing of the ultimate destination of those materials, and a presentation of the analytical results of all sampling and analyses performed and accompanying appendices containing all relevant paperwork accrued during the action (e.g., manifests, invoices, bills, contracts, permits). The final report shall also include an affidavit from a person who supervised or directed the preparation of that report. The affidavit shall

certify under penalty of law that based on personal knowledge and appropriate inquiries of all other persons involved in preparation of the report, the information submitted is true, accurate, and complete to the best of the affiant's knowledge and belief. The report shall be submitted within thirty days of completion of the work required by the U.S. EPA.

37. All notices, reports, and requests for extensions submitted under terms of this Order shall be sent by certified mail, return receipt requested, and addressed to the following:

William E. Lewis
On Scene Coordinator
U.S. EPA (SFD 9-2)
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3042

X. NOTICE OF INTENT TO COMPLY

38. On or before three calendar days after the effective date of this Order, the Respondent shall provide notice, verbally or in writing, to U.S. EPA stating his intention to comply with the terms of this Order. Verbal notification must be followed in writing within two calendar days. In the event that the Respondent fails to provide such notice, that Respondent shall be deemed not to have complied with the terms of this Order.

XI. OPPORTUNITY TO CONFER

39. Respondent may, within two (2) days of receipt of this Order, request a conference with the Branch Chief in the Response, Planning and Assessment Branch of the Superfund Division, or whomever the Branch Chief may designate. If requested, the conference shall occur within three (3) days of the request, unless extended by mutual agreement of the Parties, at EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

40. At any conference held pursuant to Respondent's request, the Respondent may appear in person, or be represented by an attorney or other representative. If Respondent desires such a conference, the Respondent shall contact Thanne Cox, EPA Attorney Advisor, at (415) 972-3908.

41. The purpose and scope of any such conference held pursuant to this Order shall be limited to issues involving the implementation of the Response Action required by this Order and the extent to which Respondent intends to comply with this Order. If such a conference is held, the Respondent may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations on which the Order is based, the appropriateness of any action that the Respondent is ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within three (3) days following the Effective Date of this Order. Any such writing should be directed to Thanne Cox, at the following address:

Thanne Cox
Environmental Protection Agency
75 Hawthorne Street, ORC-3
San Francisco, CA 94105

42. Respondent is hereby placed on notice that EPA will take any action that may be necessary in the opinion of EPA for the protection of public health and welfare and the environment, and Respondent may be liable for the costs of those actions under Section 107(a) of

XII. ENDANGERMENT AND EMERGENCY RESPONSE

43. In the event of any action or occurrence during the performance of the work that causes or threatens to cause a release of a hazardous substance or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action(s) to prevent, abate, or minimize the threat, and shall immediately notify EPA's primary OSC, or, if the primary OSC is unavailable, EPA's alternate OSC, as designated below in Section XIV. If neither of these persons is available, Respondent shall notify the EPA Emergency Response Unit, Region 9, by calling (415) 947- 4400. Respondent shall take such action(s) in consultation with EPA's OSC and in accordance with all applicable provisions of this Order, including but not limited to the Health & Safety Plan.

44. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances at or from the Site.

XIII. MODIFICATION OF WORK REQUIRED

45. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the EPA OSC by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. This verbal notification shall be followed by written notification postmarked no later than three (3) days of discovery of the unanticipated or changed circumstances.

46. EPA may determine that in addition to tasks addressed herein, additional work may be required to address the unanticipated or changed circumstances referred to in Paragraphs 43 and 45. Where consistent with Section 106(a) of CERCLA, EPA may direct, as an amendment to this Order, that Respondent perform these tasks in addition to those required herein. Respondent shall implement the additional tasks that EPA identifies. The additional work shall be completed according to the standards, specifications, and schedules set forth by EPA in any modifications to this Order.

XIV. DESIGNATED PROJECT MANAGERS

47. EPA designates William Lewis, an employee of EPA Region 9, as its primary OSC and designated representative at the Site, who shall have the authorities, duties, and responsibilities vested in the OSC by the NCP. This includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Order or undertake the Response Action (or portions of the Response Action) when conditions at the Site present or may present a threat to public health or welfare or the environment as set forth in the NCP. Within seven (7) days of the Effective Date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for overseeing Respondent's implementation of this Order. To the maximum extent possible, all oral communications between Respondent and EPA concerning the activities performed pursuant to this Order shall be directed through EPA's OSC and Respondent's Project Coordinator. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be delivered in accordance with Paragraph 23, above.

48. EPA and Respondent may change their respective OSC and Project Coordinator. Notification of such a change shall be made by notifying the other party in writing at least five (5) days prior to the change, except in the case of an emergency, in which case notification shall be made orally followed by written notification as soon as possible.

49. Consistent with the provisions of this Order, the EPA designates Donn Zuroski as an alternate OSC, in the event William Lewis is not present at the site or is otherwise unavailable. During such times, Donn Zuroski shall have the authority vested in the OSC by the NCP, as set forth in Paragraph 47 above.

50. The absence of the EPA OSC from the Site shall not be cause for the stoppage of work. Nothing in this Order shall limit the authority of the EPA OSC under federal law.

XV. SITE ACCESS

51. Respondent shall permit EPA and its authorized representatives to have access at all times to the Site to monitor any activity conducted pursuant to this Order and to conduct such tests or investigations as EPA deems necessary. Nothing in this Order shall be deemed a limit on EPA's authority under federal law to gain access to the Site.

52. To the extent that Respondent requires access to land other than land that he owns to carry out the terms of this Order, Respondent shall, within ten (10) days of the Effective Date of this Order, obtain access for: EPA, its contractors, oversight officials, or other authorized representatives; state oversight officials and state contractors; and Respondent and his authorized representatives. If Respondent fails to gain access within ten (10) days, he shall continue to use best efforts to obtain access until access is granted. For purposes of this Paragraph, "best efforts" include, but are not limited to, seeking judicial assistance, providing indemnification, or the payment of money as consideration for access. If access is not provided within the time

referenced above, EPA may obtain access under Sections 104(e) or 106(a) of CERCLA and recover any costs incurred pursuant to Section XVI of this Order.

XVI. REIMBURSEMENT OF OVERSIGHT COSTS

53. Respondent shall reimburse EPA, on written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. EPA may submit to Respondent on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondent shall, within thirty (30) days of receipt of the bill, remit by cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Region 9, Attn.: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

Respondent shall send a cover letter with any check and the letter shall identify the IVA Site by name and make reference to this Order, including the docket number stated above. Respondent shall send simultaneously to the EPA OSC notification of any amount paid, including a photocopy of the check.

54. Interest at the rate established under Section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

XVII. DELAY IN PERFORMANCE

55. Any delay in the performance of any requirement of this Order that, in the EPA's sole judgment and discretion, is not properly justified by Respondent under the terms of this Section shall be considered a violation of this Order. Any delay in performance of any

requirement of this Order shall not affect any other obligation of Respondent under the terms and conditions of this Order.

56. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's primary OSC within twenty-four (24) hours after Respondent first knew or should have known that a delay might occur. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying EPA by telephone, the Respondent shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not justifications for any delay in performance.

57. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to perform any of Respondent's obligations under this Order.

58. If EPA determines that good cause exists for an extension of time, it may grant a request made by Respondent pursuant to Paragraph 57 above, and specify in writing to the Respondent the new schedule for completion of the activity or submission of the document for which the extension was requested.

XVIII. RECORD PRESERVATION

59. Respondent shall maintain, during the pendency of this Order, and for a minimum of five (5) years after EPA provides notice to Respondent that the work has been completed, a depository of the records and documents required to be prepared under this Order. In addition, Respondent shall retain copies of the most recent version of all documents that relate to hazardous substances at the Site and that are in his possession or in the possession of its employees, agents, contractors, or attorneys. After this five-year period, Respondent shall notify EPA at least thirty (30) days before the documents are scheduled to be destroyed. If EPA so requests, Respondent shall provide these documents to EPA.

XIX. ENFORCEMENT AND RESERVATIONS

60. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or otherwise incurred at the Site and not reimbursed by Respondent. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight costs, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

61. Notwithstanding any other provision of this Order, at any time during the Response Action, EPA may perform its own studies, complete the Response Action (or any portion of the Response Action) and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

62. Nothing in this Order shall preclude EPA from taking any additional enforcement action, including modification of this Order or issuance of additional Orders, or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the

future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9607(a), et seq., or any other applicable law. Respondent shall be liable under CERCLA Section 107(a) for the costs of any such additional actions.

63. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Resource Conservation and Recovery Act, or any other applicable statutes or regulations.

64. Notwithstanding compliance with the terms of this Order, including the completion of the EPA-approved Response Action, Respondent is not released from liability, if any, for any enforcement actions beyond the terms of this Order taken by EPA.

65. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other legal authority, including the right to seek injunctive relief, monetary penalties, reimbursement of response costs, and punitive damages for any violation of law or this Order.

66. EPA expressly reserves all rights and defenses that it may have, including the EPA's right both to disapprove of work performed by Respondent and to request the Respondent to perform tasks in addition to those detailed in Section IX of this Order.

67. This Order does not release Respondent from any claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause of action, or demand that lawfully may be asserted by representatives of the United States or the state of California.

68. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of his obligation to obtain such formal approval as may be required by this Order.

XX. SEVERABILITY

69. If any provision or authority of this Order or the application of this Order to any circumstance is held by a court to be invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby, and the remainder of this Order shall remain in force.

XXI. DISCLAIMER

70. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or his employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States shall be held as a party to any contract entered into by Respondent, or his employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXII. PENALTIES FOR NONCOMPLIANCE

71. Respondent is advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), that willful violation or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject Respondent to a civil penalty of up to \$27,500 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause may also subject Respondent to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondent to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).


XXIII. TERMINATION AND SATISFACTION

72. The provisions of this Order shall be deemed satisfied on Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that all of the terms of this Order, including any additional tasks that EPA has determined to be necessary, have been completed.

Unilateral Administrative Order 2002-12

IT IS SO ORDERED:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

By: 
Daniel A. Meer, Chief
Response, Planning and Assessment Branch
Superfund Division
Region IX
U.S. Environmental Protection Agency

Date: 09 August 2002

EPA Region 9 Contacts:

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